

## EXPLANATION of SIGNIFICANT DIFFERENCES

### Fresno Municipal Sanitary Landfill Superfund Site Operable Units 1 and 2

**Site Name:** Fresno Municipal Sanitary Landfill Superfund Site  
**Operable Units:** 1 and 2  
**Location:** Fresno, California  
**Lead Agency:** United States Environmental Protection Agency  
**Lead State Agency:** California Department of Toxic Substances Control

#### Introduction

The United States Environmental Protection Agency (EPA) placed the Fresno Municipal Sanitary Landfill Superfund Site ("FMSL Site" or "Site") on the National Priorities List pursuant to the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601-9675 (CERCLA), in October 1989. EPA's action was prompted by a series of investigations that confirmed the presence and off-site migration of methane in soil gas and volatile organic compounds (VOCs) in groundwater.

EPA's initial Record of Decision (ROD) for the FMSL Site, issued on September 30, 1993, selected an interim remedy for the source control Operable Unit (OU), identified as OU-1. The OU-1 remedy includes the installation of a landfill cap, a landfill gas monitoring system, a landfill gas collection and treatment system, and stormwater management.

EPA issued a second ROD on September 30, 1996, selecting a final remedy to address the contaminated groundwater, identified as OU-2. The OU-2 remedy includes institutional controls, a groundwater monitoring network and treatment facility, a system for groundwater containment at the perimeter of the landfill and at the perimeter of the contaminant plume, and an aquifer restoration system.

The operational remediation systems at the FMSL Site currently include the following components:

- OU-1: Landfill cover; landfill gas collection, treatment, and monitoring system; stormwater management system; and
- OU-2: Elements of the groundwater monitoring network; landfill perimeter groundwater containment system; and groundwater containment system for the perimeter of the contaminant plume.

EPA is issuing this Explanation of Significant Differences (ESD) to provide notice of the following modifications and clarifications to the remedies selected in the 1993 and 1996 RODs:

- Incorporation of specific institutional controls to insure that the OU-1 and OU-2 remedies contain sufficient provisions to protect human health and the environment in the long-term;
- Identification of changes in State of California (State) statutory requirements for landfill closure and post-closure requirement citations;
- Documentation of the current groundwater cleanup level for trans-1, 2-dichloroethene and chloroform;
- Correction of citations from the United States Code of Federal Regulations (CFR) incorrectly included in the RODs; and
- Identification of a new State regulation regarding land use covenants as relevant and appropriate to implementation of the remedy.

None of the above changes fundamentally affect the Site's selected remedies.

EPA is issuing this ESD to satisfy its responsibilities under Section 117(c) of CERCLA and Section 300.435(c)(2)(i) of the National Contingency Plan, 40 CFR Part 300 (NCP). This ESD and any comments regarding this ESD will become part of the Administrative Record for the FMSL Site pursuant to the NCP, 40 CFR § 300.825(a)(2). Copies of the Administrative Record are available for public review at the following locations:

Fresno County Central Library  
2420 Mariposa Street  
Fresno, CA 93721  
(559) 488-3155

EPA Region 9 Superfund Records Center  
95 Hawthorne Street – Suite 403S  
San Francisco, CA 94105  
(415) 536-2000

### **Site History, Contamination and Selected Remedy**

From 1935 to 1987, the 145-acre FMSL was used by the City of Fresno as a municipal waste landfill. In June of 1984, the California Department of Toxic Substances Control (DTSC) conducted a preliminary inspection in response to complaints from nearby residents. As a result of that preliminary inspection, it was determined that methane gas in soil and VOCs in groundwater had migrated offsite. Between 1984 and 1989, numerous investigations of soil and groundwater were conducted at the site. In October 1989, the FMSL Site was placed on the National Priorities List.

As described in the 1993 ROD, the OU-1 remedy included the following major components:

- Landfill gas collection and conveyance system consisting of interior gas extraction wells, perimeter gas extractions wells, a blower system, and a piping system for conveyance of collected landfill gas to a gas treatment system
- Landfill gas treatment system consisting of on-site combustion of landfill gas in landfill gas flares
- Gas condensate collections system consisting of piping and storage vessels to manage the condensate generated during the operation of the gas control system
- A contingency leachate collection system consisting of liquid extraction pumps placed in the bottoms of gas extraction wells, piping to convey the leachate and storage vessels to manage the collected leachate
- Landfill gas migration monitoring system consisting of a series of monitoring probes placed along the landfill perimeter
- Landfill cover consisting of a series of functional layers that together minimize the infiltration of water into underlying refuse, provide erosion control, and contribute to effective operation of the gas control system
- Storm water management consisting of perimeter drains, retention basins, and associated structures

The selected remedy for OU-2 consisted of the following major components, as described in the 1996 ROD:

- Groundwater monitoring
- Abandonment of certain wells
- Institutional Controls during remediation
- Phasing-in of the groundwater extractions system
- Installation and operation of phase I groundwater extraction wells (landfill perimeter containment)
- Installation and operations of phase II groundwater extractions wells (plume containment)
- Installation and operation of phase III groundwater extraction wells (aquifer restoration)
- Analysis of each phase of the groundwater remedy
- Treatment system for the extracted groundwater and all necessary piping

During the implementation of the OU-1 and OU-2 remedies, part of the Site was redeveloped into a Regional Park and Sports Complex.

### **Basis for this Explanation of Significant Differences**

EPA and the State of California have identified a number of factual and legal developments that need to be addressed, and that form the basis for this ESD, as described below.

Both the OU-1 and OU-2 remedies require the implementation of institutional controls to be protective of human health and the environment in the long term. EPA has identified specific institutional controls to be implemented at the Site. Land-use controls are needed to protect the landfill cap and to restrict the installation of water wells. In addition, prohibitions on well construction within certain areas surrounding the Site are needed to control the movement of the groundwater contaminant plume.

In addition, DTSC identified a necessary revision to the statutory provisions cited in the OU-1 ROD. The OU-1 ROD cited the State Water Resources Control Board and Integrated Waste Management Board closure and post-closure maintenance requirements for landfill cap integrity and public health and safety protection (*i.e.*, preventing public contact with landfill waste) as applicable or relevant and appropriate requirements (ARARs). Those regulations – drawn from Title 23, Division 3, Chapter 15 (State Water Resources Control Board) and Title 14, Division 7 (Integrated Waste Management Board) – have now been superseded and replaced by provisions of Title 27.

The OU-2 ROD also incorrectly listed the Safe Drinking Water Act (40 CFR Section 141.61) maximum contaminant level (MCL) for trans-1, 2-dichloroethene (trans-1, 2-DCE) of 100 micrograms per liter as the groundwater cleanup level for this contaminant. The correct cleanup level is the more stringent State MCL for trans-1, 2-DCE of 10 micrograms per liter, as set forth in California Code of Regulations, Title 22, Division 4, Chapter 15, Articles 4, 5.5, and 8. Also, since the issuance of the OU-2 ROD, the federal MCL for chloroform has changed from 100 micrograms per liter to 80 micrograms per liter.

The OU-2 ROD also contains incorrect citations from the Clean Water Act: Title 33, Code of Federal Regulations, Parts 301, 302, and 307, should be Title 33, United States Code, Sections 1311, 1312, and 1317.

Since issuance of the OU-2 ROD, the State has implemented a new regulation regarding environmental land use covenants. This ESD adopts certain subsections of that regulation – California Code of Regulations, Title 22, Section 67391.1 – as relevant and appropriate requirements for the FMSL Site OU-2 remedy.

## **Description of Significant Differences**

### Institutional Controls

The OU-2 ROD at §8.1 provides the following description of ICs:

*Institutional controls are non-engineering methods by which access to contaminated environmental media is restricted. Most institutional controls are in the form of use or access restrictions. Institutional controls anticipated at the Fresno Sanitary Landfill will consist of restricting the installation of water supply wells in the impacted aquifer and limiting site access. Controls on the use of the groundwater pumped from the contaminated aquifer by existing wells will be*

*considered. These institutional controls can be enforced by the County government agency or by zoning and deed restrictions.*

In order to formalize use and access restrictions at the FMSL Site, the City and the State, in consultation with EPA, have executed two restrictive covenants that document legally enforceable land-use restrictions to protect human health and the environment at the site. As the current property owner, the City is responsible for ensuring that the restrictions set forth in the covenant are implemented. The signed restrictive covenants have been recorded at the Fresno County Recorder's Office and are available for public review. The recorded restrictive covenants are legally enforceable – that is, the State and EPA will have the authority to go to court to enforce the restrictions and requirements described in the covenants.

**Landfill Restrictive Covenant** – The Landfill Restrictive Covenant establishes land-use controls for the parcel of property that contains the entire landfill. This covenant restricts access to the landfill cap and prohibits activities that could damage the cap or otherwise interfere with the cap's function. The specific restrictions established by this covenant are set forth in Appendix A of this ESD.

**Sports Complex Restrictive Covenant** – The Sports Complex Restrictive Covenant establishes land-use controls for the parcels of property that include the City of Fresno's Regional Sports Park and the south and east detention basins. The Covenant prohibits activities that could interfere with the operation of the remedies or expose humans to contaminants at the site. The specific restrictions established by this covenant are set forth in Appendix B of this ESD.

**Well Assessment and Prohibition Program** – The City and the County of Fresno (County) have implemented a program that restricts the installation of water supply wells in the vicinity of the landfill. The program requires evaluation of adverse affects that could be caused by groundwater pumping in proposed water supply wells on the migration of existing groundwater contaminant plumes and on the operation of the groundwater remediation system. This program establishes two zones: a well prohibition zone and a well assessment zone. When a well permit application is submitted to the County, which is the well permitting authority, the County determines whether the proposed well location is in one of these two zones. If the applicant proposes to install a well in the prohibition zone, the County will deny the permit. If the proposed well will be located in the well assessment zone, the County coordinates with the City for further assessment. After evaluating the well design, including well depth, the City specifies any design modifications necessary to insure that the well construction and operation will not interfere with the remedy.

Costs associated with the development and implementation of the Landfill Restrictive Covenant, Sports Complex Restrictive Covenant, and the Well Assessment and Prohibition Program are minimal and will not impact activities associated with the OU-1 and OU-2 remedies.

Implementation of the Landfill Restrictive Covenant and the Sports Complex Restrictive Covenant will not affect the time required to reach groundwater cleanup levels. Implementation of the Well Assessment and Prohibition Program may reduce the time required to reach groundwater cleanup levels.

#### Applicable or Relevant and Appropriate Requirements

**Landfill Closure and Post-Closure Requirements** – As stated above, the OU-1 ROD cites sections of the California Code of Regulations (CCR), Titles 14 and 23, as applicable or relevant and appropriate requirements (ARARs) for landfill closure and post-closure activities.

In 1993, the State of California consolidated its regulatory provisions governing solid waste management under Title 27, Division 2, Subdivision 1, entitled “Consolidated Regulations for Treatment, Storage, Processing or Disposal of Solid Waste.” This subdivision incorporates the Title 14 and Title 23 provisions identified in the OU-1 ROD.

This ESD formally adopts the substantive provisions of the newly renumbered sections as the ARARs for the OU-1 remedy. There are no known significant changes noted in these regulations that would affect the current remedy at the FMSL Site. A table reflecting the original and revised regulations is attached at Appendix C.

**Maximum Contaminant Level for trans-1, 2-dichloroethene and chloroform** – Groundwater cleanup levels cited in the OU-2 ROD were based on federal MCLs promulgated under the Safe Drinking Water Act (40 Code of Federal Regulations Section 141.61). However, under CERCLA §121(d)(2)(A)(ii) and NCP §300.400(g)(4), where a promulgated state requirement is more stringent than the federal requirement, EPA will select the state standard as the ARAR.. The OU-2 ROD incorrectly cited the less stringent federal MCL for trans-1, 2-dichloroethene of 100 micrograms per liter. In addition, the federal MCL for chloroform has changed from 100 micrograms per liter to 80 micrograms per liter since the ROD was issued.

This ESD corrects the ARAR identification in the ROD by adopting the more stringent State of California MCL for trans-1, 2-dichloroethene (10 micrograms per liter) (CCR, Title 22, Division 4, Chapter 15, Articles 4, 5.5, and 8) and the current federal MCL for chloroform (80 micrograms per liter) as the relevant and appropriate requirement for groundwater remediation cleanup levels at the FMSL Site. These changes to MCLs will not affect the site remedy because these two contaminants are present at low concentrations at the Site and are not drivers for determining the scope of the groundwater remedy.

**Clean Water Act Citations** – The 1996 OU-2 ROD incorrectly cited 33 Code of Federal Regulations (CFR) Parts 301 and 302 as ARARs for Effluent Limitations, and 33 CFR Part 307 as an ARAR for Toxic and Pretreatment Standards. The correct citation for Effluent Limitations requirements is 33 United States Code (USC) §§1311-1312 (Clean Water Act, Sections 301 and 302), and for Toxic and Pretreatment Standards is 33 USC

§1317 (Clean Water Act, Section 307), and this ESD therefore identifies these standards as the applicable requirements for the remedy.

Correction of the ARARs does not affect the scope, performance or cost of the selected remedies. In addition to the Clean Water Act requirements, the 1996 OU-2 ROD also selected the Water Quality Control Plan (Basin Plan) as an ARAR, and that Basin Plan implements the effluent limitations of the Clean Water Act. Correction of the ARARs will not affect the time to achieve cleanup levels for OU-1 or OU-2.

**Environmental Land Use Covenants** – As noted above, the OU-2 ROD required the implementation of institutional controls to protect the public and the environment from contact with hazardous substances. Since EPA issued the OU-2 ROD, the State has issued a new regulation regarding land use covenants: CCR, Title 22, Section 67391.1. Subsections (a) and (d) of Section 67391.1 are relevant and appropriate requirements for the OU-1 and OU-2 remedies. Specifically, these subsections set forth the procedures that EPA, the State, and the City of Fresno followed in developing the covenants for the FMSL Site. DTSC has noted its position that all of Section 67391.1 – and not only the two subsections identified by EPA – are relevant and appropriate requirements.

#### **Support Agency Comments**

As required by 40 C.F.R 300.515(h)(3), EPA provided DTSC an opportunity to review and comment on the ESD. DTSC concurred with this ESD on June 14, 2012.

#### **Statutory Determinations**

Modifications to the OU-1 and OU-2 RODs documented in this ESD do not fundamentally change the selected remedies. The selected remedies continue to attain the mandates of Section 121 of CERCLA, 42 USC §9621, and the NCP, and continue to meet ARARs pursuant to 40 CFR §§300.430(f)(1)(ii)(B)(1)-(2). Specifically, the remedies are protective of human health and the environment, comply with Federal and State requirements that are applicable or are relevant and appropriate to the remedial actions, are cost effective, and utilize permanent solutions and resource recovery technologies to the maximum extent possible.

The OU-2 remedy also satisfies the statutory preference for treatment as a principal element of remediation – that is, the remedies reduce toxicity, mobility or volume of hazardous substances, pollutants, or contaminants through treatment.

Because the remedies will result in hazardous substances, pollutants, or contaminants remaining on site above levels that allow for unrestricted exposure, statutory reviews will continue to be conducted every five years to ensure that the remedies are protective of human health and the environment. The first Five-Year Review of the FMSL Site was completed in 2005, and the second Five-Year Review was completed in 2010. The third Five-Year Review will be completed by September 2015.

## Public Participation

Pursuant to 40 C.F.R. § 300.435(c)(2)(i), a formal public comment period is not required for an ESD to a ROD when the difference does not fundamentally alter the remedial actions with respect to scope, performance or cost. This ESD does not propose a fundamental change to the OU-1 or OU-2 remedies as described in the 1993 and 1996 RODs with respect to scope, performance or cost; therefore, no formal public comment period is required. As required by the NCP, 40 C.F.R. § 300.435(c)(2)(i), EPA will publish a public notice in the local newspaper and will make this ESD and supporting information available for public review through the Administrative Record and information repository for the FMSL Site.

## Conclusion

This Explanation of Significant Differences for the Fresno Municipal Sanitary Landfill Superfund Site explains the following changes:

- Adoption of specific institutional controls – two restrictive covenants and a municipal program for restricting installation of wells – to the OU-1 and OU-2 remedies; and
- Correction of several ARARs, including updating the groundwater cleanup levels for trans-1, 2-dichloroethene and chloroform, correcting the citations for effluent limitations and pretreatment standards, revising the citation of State regulations for landfill closure and post-closure maintenance requirements, and identifying the a new State regulation regarding land use covenants as a relevant and appropriate requirement.

With the approving official's signature below, this ESD is hereby APPROVED as of the signature date.

Date:

9/27/12



Kathleen Salyer  
Assistant Director, Superfund Division  
California Site Cleanup Branch  
Region IX  
U.S. Environmental Protection Agency



## Appendix A

### Text of Article IV of the Landfill Restrictive Covenant

#### ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation;
- (b) A hospital for humans;
- (c) A public or private school for persons under 21 years of age; or
- (d) A day care center for children.

4.02. Prohibited Activities. Unless a change is authorized pursuant to Article VI of this Covenant, the following activities are specifically prohibited:

- (a) Raising of food (e.g., cattle or food crops); and
- (b) Drilling for drinking water, oil, or gas.

4.03. Non-Interference with Remedial Systems.

(a) All uses and development of the Property shall preserve the integrity and physical accessibility of the Remedial Systems including, but not limited to, the remedial cap, landfill gas collection system, landfill gas flare, groundwater remedial treatment system, groundwater extractions wells, and groundwater monitoring wells. Activities that may interfere with or affect the integrity of the Remedial Systems, as constructed pursuant to the RODs, shall not be conducted on the Property, except as authorized in subparagraph (b) below.

(b) Except as authorized in detail in the O&M documents, the following activities shall not occur without prior written approval by the CERCLA Lead Agency after notice and opportunity to comment by U.S. EPA and the Department:

- (i) Construction or modifications that impact any of the Remedial Systems;
- (ii) Interference with or alterations of the grading, vegetation, or drainage controls; and

(iii) Penetrations or interferences (including, but not limited to, utility trench excavations, excavations for planting trees or large bushes, foundation excavations, and foundation piles) within the Cap or potentially impacting any Remedial Systems.

(c) The Owner shall notify U.S. EPA and the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap or other Remedial Systems; and (ii) the type and date of repair of such damage. Notification to U.S. EPA and the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

(d) New groundwater extraction, injection or monitoring wells shall not be constructed unless prior written approval for such is obtained from the CERCLA Lead Agency after notice and opportunity to comment by U.S. EPA and the Department.

(e) The Owner will provide a copy of this Covenant to all easement holders for all or any portions of the Property.

(f) The Owner shall maintain site access controls, such as gates, fencing, and barriers, as well as warning signs and other necessary information, in and around the Property, in accordance with the Final Post-Closure Operations and Maintenance Plan for the Source Control Operable Unit (2003, amended 2007).

4.04. Access for the Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities for the Remedial Systems on the Property consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment. Nothing in this instrument shall limit or otherwise effect the Department's right of entry and access, or authority to take response actions, under CERCLA; the National Contingency Plan, 40 Code of Federal Regulations Part 300 (1997) and its successor provisions; Chapter 6.8, Division 20 of the California Health and Safety Code; California Civil Code, or other applicable State Law.

4.05. Access for Implementing Operation and Maintenance and Five Year Reviews. The entity or person responsible for implementing the Operation and Maintenance Plans and Five Year Reviews shall have reasonable right of entry and access to the Property for the purpose

of implementing the Operation and Maintenance Plans and Five Year Reviews until the CERCLA Lead Agency determines that no further operation and maintenance or Five Year Review is required.

4.06. Access for U.S. EPA. Nothing in this instrument shall limit or otherwise affect U.S. EPA's right of entry and access, or U.S. EPA's authority to take response actions, under CERCLA; the National Contingency Plan, 40 Code of Federal Regulations Part 300 (1997) and its successor provisions; or federal law.

4.07. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Inspection Report to the Department for its approval by January 15<sup>th</sup> of each year. The annual report shall describe how all requirements outlined in this Covenant have been met. The annual report, filed under penalty of perjury, shall certify that the Property is being used in a manner consistent with this Covenant. The annual report must include the dates, times, and names of those who conducted and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must, within ten (10) days of identifying the violation: determine the identity of the party in violation; send a letter advising the party of the violation of the Covenant; and demand that the violation cease immediately. Additionally, copies of any correspondence related to the enforcement of this covenant shall be sent to the Department and U.S. EPA within ten (10) days of its original transmission.

## **Appendix B**

### **Text of Article IV of the Sports Complex Restrictive Covenant**

#### **ARTICLE IV**

#### **RESTRICTIONS**

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation;
- (b) A hospital for humans;
- (c) A public or private school for persons under 21 years of age; or
- (d) A day care center for children.

4.02. Prohibited Activities. Unless a change is authorized pursuant to Article VI of this Covenant, the following activities are specifically prohibited:

- (a) Raising of food (e.g., cattle or food crops); and
- (b) Drilling for drinking water, oil, or gas.

4.03. Non-Interference with Remedial Systems.

(a) All uses and development of the Property shall preserve the integrity and physical accessibility of the Remedial Systems including, but not limited to, the remedial cap, landfill gas collection system, landfill gas flare, groundwater remedial treatment system, groundwater extractions wells, and groundwater monitoring wells. Activities that may interfere with or affect the integrity of the Remedial Systems, as constructed pursuant to the RODs, shall not be conducted on the Property, except as authorized in subparagraph (b) below.

(b) Except as authorized in detail in the O&M documents, the following activities shall not occur without prior written approval by the CERCLA Lead Agency after notice and opportunity to comment by U.S. EPA and the Department:

- (i) Construction or modifications that impact the Remedial Systems;
- (ii) Interference with or alterations of the drainage controls; and
- (iii) Construction of any new enclosed structure on the Property without a passive system (e.g., vapor barrier) or active system in place to ensure that indoor air will not pose a threat to the occupants of that structure.

(c) The Owner shall notify U.S. EPA and the Department of each of the following: (i) the type, cause, location and date of any damage to any Remedial Systems; and (ii) the type and date of repair of such damage. Notification to U.S. EPA and the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

(d) New groundwater extraction, injection or monitoring wells shall not be constructed unless prior written approval for such is obtained from the CERCLA Lead Agency after notice and opportunity to comment by U.S. EPA and the Department.

(e) The Owner will provide a copy of this Covenant to all easement holders for all or any portions of the Property.

(f) The Owner shall maintain site access controls, such as gates, fencing, and barriers, as well as warning signs and other necessary information, in and around the Property, in accordance with the Final Post-Closure Operations and Maintenance Plan for the Source Control Operable Unit (2003, amended 2007).

4.04. Access for the Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities for the Remedial Systems on the Property consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment. Nothing in this instrument shall limit or otherwise effect the Department's right of entry and access, or authority to take response actions, under CERCLA; the National Contingency Plan, 40 Code of Federal Regulations Part 300 (1997) and its successor provisions; Chapter 6.8, Division 20 of the California Health and Safety Code; California Civil Code, or other applicable State Law.

4.05. Access for Implementing Operation and Maintenance and Five Year Reviews. The entity or person responsible for implementing the Operation and Maintenance Plans and Five Year Reviews shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Plans and Five Year Reviews until the CERCLA Lead Agency determines that no further operation and maintenance or Five Year Review is required.

4.06. Access for U.S. EPA. Nothing in this instrument shall limit or otherwise affect U.S. EPA's right of entry and access, or U.S. EPA's authority to take response actions, under

CERCLA; the National Contingency Plan, 40 Code of Federal Regulations Part 300 (1997) and its successor provisions; or federal law.

4.07. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Inspection Report to the Department for its approval by January 15<sup>th</sup> of each year. The annual report shall describe how all requirements outlined in this Covenant have been met. The annual report, filed under penalty of perjury, shall certify that the Property is being used in a manner consistent with this Covenant. The annual report must include the dates, times, and names of those who conducted and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must, within ten (10) days of identifying the violation: determine the identity of the party in violation; send a letter advising the party of the violation of the Covenant; and demand that the violation cease immediately. Additionally, copies of any correspondence related to the enforcement of this covenant shall be sent to the Department and U.S. EPA within ten (10) days of its original transmission.

## Appendix C

### Revised Citations for FSL Applicable or Relevant and Appropriate Requirements

#### Identified by California Regional Water Quality Control Board

<b>Title 23</b>	<b>Title 27</b>	<b>Topic</b>
2510(a)-(d)	20080(a)-(d)	Engineered alternatives to the prescriptive standard for final cover at a waste management unit
2540	20310	General construction standards for containment structures
2541	20320	General design and construction requirements for containment structures
2546	20365	Design, construction and maintenance of drainage, collection and holding facilities for waste management units
2547	20370, 21750	Design and construction of landfill structures to withstand seismic events
2580	20950, 22207	General closure requirements
2581	21090	Landfill closure requirements
2596	21760	Information required in the design reports and operations plan for containment structures, precipitation and drainage control facilities and ancillary facilities

#### Identified by California Integrated Waste Management Board

<b>Title 14</b>	<b>Title 27</b>	<b>Topic</b>
17705	20919	Gas control
17774	20324	Construction quality assurance
17783	20918, 20415, 20921	Gas monitoring and control during closure and post-closure
17783.9	20932	Monitored parameters
17783.11	20933	Monitoring frequency
17773	21140	Final cover
17777	21090, 21750	Final site face
17778	20365, 21150, 21769	Final drainage
17779	21090, 21150	Slope protection and erosion control
17783.5 <sup>1</sup>	20415, 20925	Perimeter monitoring network
17783.7	20931	Structure monitoring
17776	21142, 21769	Final grading
17783.15	20937	Gas control
17788	21180	Post-closure maintenance
17792	21200	Change of ownership during closure and post-closure maintenance
17796	21190	Post-closure land use

<sup>1</sup> The OU-1 ROD mistakenly listed this provision as Section 17778.5.